STATE OF MICHIGAN

COURT OF APPEALS

RICHARD R. KOESTER, JR., Petitioner-Appellant,	UNPUBLISHED November 10, 2011
v	No. 300141 Michigan Tax Tribunal
COUNTY OF SAGINAW, Respondent-Appellee.	LC No. 00-358979

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's (MTT) final opinion and judgment denying his request for a principal residence exemption. Because the MTT properly determined that petitioner is not entitled to a principal residence exemption given that the property is occupied within the meaning of MCL 211.7dd(c), we affirm.

Petitioner owns two contiguous parcels of property in Saginaw County. His home is located on one parcel, and an office building is located on the other. Both parcels are zoned residential. This appeal involves the parcel containing the office building. Petitioner purchased the parcel in 1997 when it was vacant land. At that time, he was granted a principal residence exemption because the property was contiguous and adjacent to the parcel containing his dwelling. In 1998, petitioner obtained a special use permit to construct the office building, and, in 2001, he completed construction of the building. He has since operated his construction business in the building. Despite the change of use, petitioner continued to receive a principal residence exemption on the property containing the office building.

On December 12, 2008, petitioner filed a setback variance request for a new business sign. On the same date, respondent notified petitioner that his principal residence exemption may be invalid because the property did not appear to be his principal residence. Thereafter, respondent denied the exemption because petitioner claimed an exemption with respect to the parcel containing his dwelling and was entitled to only one principal residence exemption. Respondent billed petitioner for tax years 2005 through 2008.

Petitioner appealed the denial of the principal residence exemption to the Small Claims Division of the MTT, which granted petitioner an exemption for the 2005 tax year and denied an exemption for tax years 2006, 2007, and 2008. The MTT determined that the subject property did not qualify for an exemption because it was not "unoccupied" as that term is used in MCL

211.7dd(c). The MTT also determined, however, that petitioner was entitled to an exemption for the 2005 tax year because that year was outside the scope of MCL 211.7cc(6), which precluded respondent from denying an exemption beyond "the 3 immediately preceding calendar years." Petitioner appeals the MTT's decision with respect to tax years 2006, 2007, and 2008.

Absent fraud, our review of the MTT's decision is limited to determining whether it erred in applying the law or adopted an incorrect principle. *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011). The MTT's "'factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.'" *Id.*, quoting *Mich Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). Because this case involves statutory interpretation, we review the MTT's decision de novo. *Briggs Tax Serv, LLC v Detroit Pub Schs*, 485 Mich 69, 75; 780 NW2d 753 (2010). "The primary goal of statutory interpretation is to give effect to the Legislature's intent, focusing first on the statute's plain language." *Klooster*, 488 Mich at 296. The intent to grant a tax exemption will never be implied from language amenable to any other reasonable interpretation. *GMAC, LLC v Dep't of Treasury*, 286 Mich App 365, 375; 781 NW2d 310 (2009). Rather, "'[s]uch an intention must be expressed in clear and unmistakable terms, or must appear by necessary implication from the language used[.]" *Id.*, quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948) (further citation omitted). The party claiming the exemption has the burden of proving entitlement to the exemption. *GMAC, LLC*, 286 Mich App at 374.

MCL 211.7cc and MCL 211.7dd of the General Property Tax Act, MCL 211.1 *et seq.*, govern the principal residence, or "homestead," exemption. MCL 211.7cc(1) states that "[a] principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under . . . the revised school code . . . if an owner of that principal residence claims an exemption as provided in this section." Pursuant to MCL 211.7dd(c),

> "[p]rincipal residence" means the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established. . . . *Principal residence also includes all of an owner's unoccupied property classified as residential that is adjoining or contiguous to the dwelling subject to ad valorem taxes and that is owned and occupied by the owner*. [Emphasis added.]

Here, the subject property adjoins and is contiguous to petitioner's dwelling. At issue is whether the property is "unoccupied" within the meaning of MCL 211.7dd(c).

This Court recently interpreted the meaning of "unoccupied" in *Eldenbrady v City of Albion*, ___ Mich App ___ ; ___ NW2d ___ (2011) (Docket No. 297735, issued October 4, 2011). In that case, the petitioners sought to extend their principal residence exemption to include a contiguous, ten-acre parcel containing an abandoned school building. *Id.*, slip op at 1. The MTT denied the request based on its determination that adjacent property is eligible for a principal residence exemption only if it is vacant, unoccupied land or if it has a garage or other structures that are being used in conjunction with the principal residence. *Id.*, slip op at 2. This

Court determined that the MTT misinterpreted MCL 211.7dd(c). *Id.*, slip op at 3. This Court stated:

> Respondent argued, and the MTT concluded, that the ten-acre parcel did not qualify for the principal residence exemption under MCL 211.7dd(c) because it was not *vacant.* The MTT's final opinion and judgment, and the Department of Treasury's guidelines concerning the principal residence exemption program,[1] both make clear that the MTT considers the terms *vacant* and *unoccupied* to be synonymous. However, we conclude that these two terms are not synonymous for purposes of the present case.
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> In order to qualify for a principal residence exemption under the third sentence of MCL 211.7dd(c), property need only be "unoccupied"—not "vacant." Indeed, the word *vacant* does not appear in the text of MCL 211.7dd(c).[2] We acknowledge that the terms vacant and unoccupied are frequently used interchangeably and are considered synonyms in many instances. *Hill v Warrell,* 87 Mich 135, 138; 49 NW 479 (1891); *Stupetski v Transatlantic Fire Ins Co,* 43 Mich 373, 374; 5 NW 401 (1880); *Random House Webster's College Dictionary* (1997). But these words are not always synonymous; in some contexts each term has a meaning independent of the other. See *McNeel v Farm Bureau Gen Ins Co,* 289 Mich App 76, 92; 795 NW2d 205 (2010); see also *Mich Twp Participating Plan v Federal Ins Co,* 233 Mich App 422, 435; 592 NW2d 760 (1999). The principal definition of the word "vacant" is "having no contents; empty; void." *Random House Webster's College Dictionary* (1997). While it is true that the dictionary goes on to define "vacant" as "having no occupant; unoccupied," *id.,* we are convinced that the term *unoccupied* has a meaning separate and distinct from that of the word *vacant* for purposes of MCL 211.7dd(c).
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> "'Courts have sometimes distinguished *vacant* from *unoccupied,* holding that *vacant* means completely empty while *unoccupied* means not routinely characterized by the presence of human beings.'" *Vushaj v Farm Bureau Gen Ins Co,* 284 Mich App 513, 515–516; 773 NW2d 758 (2009), quoting Black's Law Dictionary (8th ed). Similarly, one dictionary "defines unoccupied as 'without occupants,' while defining 'occupant' as 'a tenant of a house, estate, office, etc.; resident.'" *Vushaj,* 284 Mich App at 516, quoting *Random House Webster's College Dictionary* (1995). Another dictionary observes that "'*vacant* means without inanimate objects, while *unoccupied* means without human occupants.'" *McNeel,* 289 Mich App at 92, quoting Garner, *A Dictionary of Modern Legal Usage* (2d ed). When read in context, it is clear that the Legislature intended the

[1] Michigan Department of Treasury, Guidelines for the Michigan Principal Residence Exemption Program (2010).

[2] For this reason, petitioner's argument that the office building is "vacant" because it is not a dwelling is misplaced.

term "unoccupied" in the third sentence of MCL 211.7dd(c) to mean "without human occupants" rather than "completely empty," "without inanimate objects," or "having no contents; empty; void." Indeed, if the word "unoccupied" in MCL 211.7dd(c) were to be interpreted as meaning "vacant" (and by extension "completely empty," "without inanimate objects," or "having no contents; empty; void"), then any property with a garage or shed would be ineligible for the principal residence exemption under the third sentence of MCL 211.7dd(c). Even the MTT implicitly admits that this cannot be what the Legislature intended.[2]

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[2] The Department of Treasury's guidelines, on which the MTT relied, provide that contiguous property containing a garage qualifies for the principal residence exemption under the third sentence of MCL 211.7dd(c) so long as the property is zoned residential and the garage is not inhabited or used as a dwelling.

In sum, the third sentence of MCL 211.7dd(c) does not require that contiguous property be *vacant* or completely devoid of any inanimate objects, contents, or structures to qualify for the principal residence exemption. Instead, the statutory language merely requires that the contiguous property be *unoccupied*, i.e., without human occupants. See *McNeel*, 289 Mich App at 92. As explained earlier, an occupant is a tenant or a resident. See *Vushaj*, 284 Mich App at 516. [*Eldenbrady*, ___ Mich App at ___, slip op at 4-5 (emphasis in original; first and second footnotes added).]

In accordance with *Eldenbrady*, petitioner's office building is occupied. Petitioner admits that in early 2001 he moved his construction business that he previously operated out of his home into the building. He has since used the building to operate his business.[3] Thus, the building has human occupants. Because the building is occupied the petitioner is not entitled to a principal residence exemption.

Petitioner also argues that the MTT erred by ignoring statutory language that allowed the Department of Treasury to decline to review the legality of his principal residence exemption for previous tax years. Petitioner relies on MCL 211.7cc(8), which provides, in relevant part:

The department of treasury shall determine if the property is the principal residence of the owner claiming the exemption. The department of treasury *may*

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[3] Because petitioner uses the building for business purposes, his argument that the building constitutes an "other structure" that is part of his principal residence lacks merit. Petitioner relies on the Department of Treasury's guidelines stating that an "adjoining parcel is eligible only if it is vacant or has a garage or other structures that are part of your home."

> review the validity of exemptions for the current calendar year and for the 3 immediately preceding calendar years. [Emphasis added.]

Petitioner contends that this language allowed, but did not require, the Department of Treasury to retroactively review the validity of his principal residence exemption. He further asserts that the statutory language could be used to grant him relief, particularly considering that the assessor determined that he was entitled to the exemption, he had no reason to believe that the exemption was invalid, and the assessor admitted and accepted responsibility for the error. Petitioner's argument lacks merit because the plain language of MCL 211.7cc(8) allows the Department of Treasury to review the validity of a principal residence exemption for the current year and the three immediately preceding tax years.

Finally, petitioner argues that the MTT erred by determining that he is not entitled to a partial exemption with respect to the areas of the property that are not used exclusively for business purposes. Petitioner conflates his use of the adjoining parcel with property used for multiple purposes. He relies on chapter 5 of the Department of Treasury's guidelines pertaining to "Multi-Purpose Property." The guidelines state that an owner who lives in part of his home and operates a business in another part of the home may claim a partial exemption "only on the portion that is owned and occupied as [his] principal residence." Petitioner's reliance on this chapter is misplaced because that scenario is not presented here. Rather, petitioner's dwelling is located on one parcel and he operates his business from a building on the adjoining parcel. Further, the MTT correctly determined that MCL 211.7dd(c) does not provide for a partial exemption. The statutory language allows for an exemption for all of an owner's unoccupied property that adjoins or is contiguous to his dwelling. It makes no mention of partial occupation. Thus, petitioner's argument that he is entitled to a partial exemption for the areas that he does not occupy exclusively for business purposes lacks merit.[4]

Affirmed.

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

[4] Petitioner also argues that the MTT erred by failing to consider the reassessed value of the property for purposes of determining his retroactive tax liability. Because he failed to cite any legal authority supporting his argument, however, he has abandoned review of that issue. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *DeGeorge v Warheit*, 276 Mich App 587, 596; 741 NW2d 384 (2007).